

COUNTY NOTICES PURSUANT TO A.R.S. § 49-112

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NOTICE OF FINAL RULEMAKING PURSUANT TO A.R.S. §49-471.08(E)

PINAL COUNTY AIR QUALITY CONTROL DISTRICT

[M07-680]

PREAMBLE

1. On December 12, 2007, the Pinal County Board of Supervisors adopted a replacement ordinance, imposing additional regulations upon indoor and outdoor burning during high pollution events. At least in part, that action relied upon an expedited process as allowed under A.R.S. §49-471.08. This constitutes the publication required under A.R.S. §49-471.08(E). See 13 A.A.R. 3158 (9/14/2007) for additional background.
2. Pursuant to A.R.S. §49-471.08(A)(2), Donald P. Gabrielson, the Control Officer of the Pinal County Air Quality Control District, finds that Laws 1007, Chapter 292 ("Senate Bill 1552"), §3 mandates, subject to certain statutory exemptions, that the County ban the use of indoor wood burning fireplaces in Area A whenever ADEQ declares a high pollution advisory for carbon monoxide or particulate matter. Moreover, Senate Bill 1552 §18 also mandate that the county ban outdoor residential wood combustion whenever ADEQ declares such an advisory. The Control Officer finds that the effect of the amendments to the existing ordinance is substantially identical to the sense, meaning and effect of the mandates of Senate Bill 1552.
3. The full text of the replacement ordinance follows:

Ordinance No. 121207-AQ1

PINAL COUNTY NO BURN ORDINANCE FOR AREA A

1. **Title**
This Ordinance shall be known as the "Pinal County Area A No Burn Ordinance."
2. **Repeal**
Predecessor Ordinance No. 122000-AQC (December 20, 2000) is hereby repealed.
3. **Geographic Applicability**
This prohibitions under this ordinance apply to the "affected area," namely the Pinal-County-portion of Area A as defined at A.R.S. §49-541, which includes the following areas, defined relative to the Gila & Salt River Base and Meridian:
Township 1 north, Range 8 east
Township 1 north, Range 9 east
Township 1 south, Range 8 east
Township 1 south, Range 9 east
Township 2 south, Range 8 east
Township 2 south, Range 9 east
Township 3 south, Range 7 east
Township 3 south, Range 8 east
Township 3 south, Range 9 east
4. **Triggering and Duration of Prohibition**
The "no burn" restrictions and prohibitions under this ordinance shall arise by operation of law for any calendar day or days covered by a High Pollution Advisory declared by Arizona Department of Environmental Quality for the Phoenix urban area for either carbon monoxide or particulate matter.

5. Prohibition - Indoor Residential Wood Combustion

- a. Subject to the exceptions defined in subsection b. below, a "no burn" restriction shall arise in the affected area with respect to use of indoor residential wood stoves or fireplaces.
- b. The restriction under this subsection shall not apply to solid fuel combustion in any of the following:
 1. A residential wood stove or fireplace that provides the sole or primary source of heat or fuel for cooking for a residence.
 2. A stove or fireplace that meets performance standards for new residential wood heaters manufactured on or after July 1, 1990 or sold at retail on or after July 1, 1992 as prescribed by 40 C.F.R. Part 60, Subpart AAA.
 3. A stove or fireplace that burns gaseous fuels.
 4. A stove or fireplace that conforms to rules adopted by the Board of Supervisors for burning wood in approved appliances.
- c. Penalties for Violation
Violation of this subsection shall subject the person who commits such violation to:
 1. A warning for the first violation.
 2. The imposition of a civil penalty of fifty dollars (\$50.00) for the second violation.
 3. The imposition of a civil penalty of one hundred dollars (\$100.00) for a third violation.
 4. The imposition of a civil penalty of two hundred and fifty dollars (\$250.00) for a fourth or any subsequent violation.
- d. For violations of this subsection of this ordinance, the control officer or his representative shall use a uniform civil ticket and complaint substantially similar to a uniformed traffic ticket and complaint prescribed by the rules of procedure in civil traffic cases adopted by the Supreme Court. The Control Officer or his representative may issue citations to persons in violation of this ordinance.

6. Prohibition - Suspension of Open Burning Permits

- a. Existing open burn permits shall be suspended, and a "no burn" restriction within the affected area shall be imposed with respect to open burning regulated by an open burning permit issued pursuant to the Pinal County Code of Regulations.
- b. No person affected by such a "no burn" restriction shall be entitled to a refund of any monies paid for an open burning permit that may be suspended by virtue of imposition of such a "no burn" restriction.
- c. Violation of this subsection shall constitute both a civil and a criminal offense, and shall subject to the violator to civil or criminal prosecution as set forth in Arizona Revised Statutes Title 49, Chapter 3, Article 3 (A.R.S. §49-510, *et seq.*).

7. Prohibition - Limitations on Otherwise Exempt Outdoor Fires

- a. Notwithstanding any other exemptions under this ordinance, a "no burn" restriction shall also apply within the affected area with respect to any outdoor solid fuel combustion in chimneas, fire pits and similar outdoor fires.
- b. Violation of this subsection shall constitute a civil offense, and a person who violates the prohibition of this subsection may be served a notice of violation and be subject to the enforcement provisions of Arizona Revised Statutes Title 49, Chapter 3, Article 3 (A.R.S. §49-510, *et seq.*), except that a violation that lasts no more than twenty-four hours and that is the first violation committed by that person is subject to a civil penalty of no more than five hundred dollars.

8. Definitions

- a. "Control Officer" as used in this ordinance, means the director and executive head of the Pinal County Air Quality Control District responsible for performing duties and exercising powers prescribed by law.
- b. "Fireplace" as used in this ordinance, means a built in place hearth and fire chamber or a factory-built appliance designed to burn solid fuel and which is intended for domestic use.
- c. "Inappropriate fuel" as used in this ordinance, includes but is not limited to leaves, grass clippings, green plants, refuse, rubbish, books, magazines, fiberboard, packaging, rags, fabrics, animal waste, animal carcasses, coal, waste oil, liquid or gelatinous hydrocarbons, tar, asphaltic products, waste petroleum products, paints and solvents, chemically soaked wood, wood with a moisture content of greater than 30 percent (30%), treated wood, plastic or plastic products, rubber or rubber products, office records, sensitive or classified wastes, or any substance which normally emits dense smoke or obnoxious odors.
- d. "Open outdoor fire" means combustion of any combustible material of any type outdoors, in the open where the products of combustion are not directed through a flue. "Flue" means any duct or passage for air, gases or the like, such as a stack or chimney.
- e. "Solid fuel" includes but is not limited to wood, coal, or other nongaseous or nonliquid fuels, including those fuels determined by the Pinal County Air Quality Control Director as "inappropriate fuel" to burn in residential woodburning devices.
- f. "Woodstove" means a solid-fuel burning heating appliance including a pellet stove, which is either freestanding or designed to be inserted into a fireplace.

9. Violations - Limitations on Defenses

Actions that violate this ordinance shall be *malum prohibitum*, and a lack of knowledge that a "no burn" restriction has been imposed shall not constitute a defense.